

In the Matter of Merchant Mariner's Document Z-865514
Issued to: SALVATORE MUNICI

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

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SALVATORE MUNICI

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations Sec. 137.11-11.

On 13 October, 1953, an Examiner of the United States Coast Guard at New Orleans, Louisiana, revoked Merchant Mariner's Document No. Z-865514 issued to Salvatore Munici upon finding him guilty of misconduct based upon a specification alleging in substance that while as an able seaman on board the American SS DEL NORTE under authority of the document above described, on or about 8 October, 1953, while said vessel was in the port of New Orleans, Louisiana, he wrongfully had in his possession a quantity of marijuana.

At the hearing, Appellant was given a full explanation of the nature of the proceedings, the right to which he was entitled and the possible results of the hearing. Appellant was represented by an attorney of his own selection and he entered a plea of "not guilty" to the charge and specification proffered against him.

Thereupon, the Investigating Officer and counsel for Appellant made their opening statements and the Investigating Officer introduced in evidence the testimony of four United States Customs employees.

In defense, Appellant offered in evidence the testimony of several witnesses who stated that Appellant was a person of good character, a good seaman and a hard worker. Appellant also testified under oath in his own behalf. He stated that he did not know how the marijuana got in his clothing and that he has never used or knowingly had marijuana in his possession.

At the conclusion of the hearing, having heard the arguments of the Investigating Officer and Appellant's counsel and given both parties an opportunity to submit proposed findings and conclusions, the Examiner announced his findings and concluded that the charge had been proved by proof of the specification. He then entered the order revoking Appellant's Merchant Mariner's Document No. Z-865514 and all other licenses, certificates and documents issued to this Appellant by the United States Coast Guard or its predecessor authority.

From that order, this appeal has been taken, and it is urged that Appellant was "framed" by

one of his fellow seamen. Appellant contends that the Customs informer must have had a confederate on board the ship because a shipmate said he knew two days before arrival that Appellant was to be searched. Appellant also urges that proof of his excellent character and prior record is evidence of his innocence; and he should be given an opportunity to support his wife and child by pursuing his livelihood at sea.

APPEARANCES: George Smill, Esquire, of New Orleans, Louisiana, of Counsel.

Based upon my examination of the record submitted, I hereby make the following

FINDINGS OF FACT

On 8 October, 1953, Appellant was serving as an able seaman on board the American SS DEL NORTE and acting under authority of his Merchant Mariner's Document No. Z-865514 while the ship was in the port of New Orleans, Louisiana. On this date, a routine search of the ship was conducted by the U. S. Customs authorities.

Since the Customs authorities had been informed that Appellant was suspected of smuggling marijuana into the United States, Appellant's belongings were thoroughly searched by two Port Patrol Officers. This was done in Appellant's forecandle aboard the ship and while he was present. One of the Port Patrol Officers found some particles in one of the pockets of a piece of clothing in Appellant's locker. The Port Patrol Officer thought the substance was marijuana and he asked Appellant about it. Appellant admitted ownership of the clothing but denied any knowledge about the presence of marijuana. By using a small clean brush, the Customs authorities obtained 15 separate samples of fragments from four or five articles of clothing and a suitcase, all of which belonged to Appellant. Individual analysis of the samples disclosed that 11 of the samples contained marijuana.

There is no prior record of disciplinary action having been taken against Appellant and he has been going to sea since 1947.

OPINION

Appellant does not contest the evidence that several articles of clothing which belonged to him contained fragments of marijuana. In the absence of an explanation which was satisfactory to the Examiner, this was sufficient evidence to conclude that Appellant knew that he had physical possession of the substance and that he knew the substance was marijuana. It is very unlikely that another person would want to, or be able to, "plant" such minute particles of marijuana in 11 different places in Appellant's clothing and suitcase. For this reason primarily, the Examiner rejected Appellant's denial that he knew of the presence of the marijuana. Since the trier of the facts who sees and hears the witnesses is ordinarily the best judge as to their credibility, I accept the Examiner's rejection of Appellant's defence of lack of knowledge; and I agree with the Examiner's conclusion that Appellant had wrongful possession of marijuana. This is further supported by the fact that there was sufficient marijuana for one of the Port Patrol Officers to suspect what is was

when searching Appellant's clothes.

I see no merit in the point raised by Appellant that the person who informed on him must have had a confederate on the ship. There is no evidence as to who this confederate might have been or what motive he would have in "framing" Appellant by placing marijuana in his clothing and suitcase.

The strict police of the Coast Guard is to revoke a seaman's document if he is found guilty of any offense involving marijuana or other narcotics, regardless of the quantity. Therefore, the order of the Examiner will be sustained despite Appellant's prior clear record, the evidence as to his good character and the personal hardship which might result from this order of revocation.

ORDER

The order of the Examiner dated at New Orleans, Louisiana, on 13 October, 1953, is AFFIRMED.

Merlin O'Neill
Vice Admiral, United States Coast Guard
Commandant

Dated at Washington, D. C., this 5th day of May, 1954.